



## **NATIONAL TRANSPORTATION SAFETY BOARD**

### **49 CFR Part 801**

**[Docket No.: NTSB-2021-0006]**

**RIN 3147-AA23**

### **Internal Personnel Rules and Practices of the NTSB**

**AGENCY:** National Transportation Safety Board (NTSB).

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The National Transportation Safety Board (NTSB) is amending its Internal Personnel Rules and Practices to reflect that the agency is closing its “public reference room” and will now make qualifying records electronically available. Moreover, the agency will remove an outdated paragraph describing a particular category of exempted records under the Freedom of Information Act (FOIA): internal matters of a relatively trivial nature that have no significant public interest, and predominately internal matters that the release would risk circumvention of a statute or agency regulation. The revisions to the NTSB FOIA regulation are being issued as an interim final rule to ensure that an updated regulations is in place as soon as practicable to implement the Supreme Court decision.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The NTSB will accept written comments on this interim final rule on or before [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may send comments, identified by Docket Number (No.) NTSB-2021-0006, by any of the following methods:

- Federal e-Rulemaking Portal: <https://www.regulations.gov>.
- E-mail: [rulemaking@ntsb.gov](mailto:rulemaking@ntsb.gov).

- Fax: 202-314-6090.
- Mail/Hand Delivery/Courier: NTSB, Office of General Counsel, 490 L'Enfant Plaza East, SW, Washington, DC 20594.

*Instructions:* All submissions in response to this interim final rule must include Docket No. NTSB-2021-0006. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket, go to <https://www.regulations.gov> and search Docket No. NTSB-2021-0006.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Silbaugh, General Counsel, (202) 314-6080, [rulemaking@ntsb.gov](mailto:rulemaking@ntsb.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Previously, the agency offered its physical public reading room to allow for in-person inspection of its *Federal Register* publications; however, with the advent of modern technology, the need for such a room is obsolete as documents are electronically available to the public through [regulations.gov](https://www.regulations.gov) and the agency's electronic reading room.

Currently, part 801 provides that the NTSB will maintain a "public reference room" in accordance with FOIA and notes the various records that will be made available in that room; however, with fewer visitors and the frequent use of the public reference room as a meeting space, the agency is closing its physical reading room and will make qualifying records available electronically. Consequently, the agency is issuing this interim final rule because technical amendments are necessary to remove all references to the "public reference room."

Further, the agency will amend 49 CFR 801.52, which exempts internal personnel rules and practices of the NTSB from public disclosure under 5 U.S.C. 552(b)(2), FOIA's Exemption 2. Consistent with that exemption, § 801.52(b) pertains to records regarding

internal matters of a relatively trivial nature that have no significant public interest, and predominately internal matters that the release would risk circumvention of a statute or agency regulation. However, the Supreme Court has since held that the exemption “encompasses only records relating to issues of employee relations and human resources.” *Milner v. Department of the Navy*, 131 S.Ct. 1259 (2011). Accordingly, the NTSB is issuing an interim final rule to remove paragraph (b) from 49 CFR 801.52.

## **II. Regulatory Analysis**

Because the NTSB is an independent agency, this interim final rule does not require an assessment of its potential costs and benefits under section 6(a)(3) of Executive Order (E.O.) 12866, Regulatory Planning and Review, 58 FR 51735 (Sept. 30, 1993). In addition, the NTSB has considered whether this rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601-612). The NTSB certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

The NTSB does not anticipate this rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this rule does not have implications for federalism under E.O. 13132, Federalism, 64 FR 43255 (Aug. 4, 1999).

This rule complies with all applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, 61 FR 4729 (Feb. 5, 1996), to minimize litigation, eliminate ambiguity, and reduce burden. The NTSB has evaluated this rule under: E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629 (Feb. 16, 1994); E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks, 62 FR 19885 (Apr. 21, 1997); E.O. 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (Nov. 6, 2000); E.O. 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 18, 2001); and the National Environmental Policy Act, 42 U.S.C. 4321-47. Pursuant to the Paperwork Reduction Act, the NTSB has determined that there is no new requirement for information collection associated with this interim final rule. The NTSB has concluded that this interim final rule neither violates nor requires further consideration under those orders, statutes, E.O.s, and acts.

#### **List of Subjects in 49 CFR Part 801**

Archives and records, Freedom of information.

Accordingly, for the reasons stated in the Preamble, the NTSB amends 49 CFR part 801 as follows:

#### **PART 801—PUBLIC AVAILABILITY OF INFORMATION**

1. The authority citation for part 801 continues to read as follows:

Authority: 49 U.S.C. 1113(f); 5 U.S.C. 552; 18 U.S.C. 641, 2071; 31 U.S.C. 3717, 9701; 44 U.S.C. Chapters 21, 29, 31, and 33.

2. In part 801, revise all references to “public reference room” to read “electronic reading room”.

3. Revise § 801.52 to read as follows:

##### **§ 801.52 Internal personnel rules and practices of the NTSB.**

Pursuant to 5 U.S.C. 552(b)(2), the following records are exempt from disclosure under FOIA: Records relating solely to internal personnel rules and practices, including memoranda pertaining to personnel matters such as staffing policies, and procedures for the hiring, training, promotion, demotion, or discharge of employees, and management plans, records, or proposals relating to labor-management relations.

Jennifer Homendy,

Chair

